

Message Text

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ACTION IO-13

INFO OCT-01 ADP-00 TRSE-00 AF-10 ARA-11 EA-11 EUR-25

NEA-10 RSC-01 CIAE-00 DODE-00 PM-09 H-02 INR-09 L-03

NSAE-00 NSC-10 PA-03 PRS-01 SS-14 USIA-12 COA-02 EB-11

OIC-04 ACDA-19 AEC-11 AGR-20 CG-00 COME-00 DOTE-00

FMC-04 INT-08 JUSE-00 NSF-04 OMB-01 RSR-01 /230 W

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SUBJECT: LOS, WORKING GROUP OF SUBCOMMITTEE II, MARCH 26

1. SUMMARY: WORKING GROUP CONTINUED DISCUSSION OF UNITY VERSUS PLURALITY OF REGIMES WITH PARTICULAR EMPHASIS ON TERRITORIAL SEA CONCEPT. AUSTRIA, PERU, GUYANA, URUGUAY, NIGERIA, USSR, KUWAIT, CANADA, IRAQ, AND INDIA CONTRIBUTED TO GENERAL DISCUSSION. PERU AND URUGUAY INDICATED FLEXIBILITY ON CONTENT OF 200- MILE CLAIM.

2. AUSTRIAN REP IDENTIFIED FOUR ASPECTS OF PLURALITY:
SUBJECT MATTER (E. G., NAVIGATION, MARINE ENVIRONMENT, SCIENTIFIC RESEARCH, EXPLORATION OF RESOURCES), LIMITS, REGIONAL REGIMES, AND CATEGORIES OF STATES (E. G., MEMBERS OR NONMEMBERS OF TREATY, COASTAL STATE OR NONCOASTAL STATE, ETC.). HIS EFFORTS WERE INTENDED TO CATEGORIZE ELEMENTS OF PLURALITY OF REGIMES IN ORDER TO ASSIST IN ANALYSIS OF CONCEPT.

3. PERUVIAN REP POINTED OUT THAT TERRITORIAL SEA LIMITS COULD NOT BE SAME FOR ALL PARTS OF WORLD BECAUSE OF VARYING GEOGRAPHIC PECULARITIES. IT WAS POSSIBLE TO DISTINGUISH TWO ZONES WITHIN TERRITORIAL SEA AS HAD BEEN DONE BY LEGISLATION IN URUGUAY WHICH DESIGNATED INNOCENT PASSAGE UP TO 12 MILES
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WITH UNIMPAIRED FREEDOM OF NAVIGATION BEYOND 12 MILES. BRAZIL HAD FOUND EXAMPLES OF PLURALITY OF REGIMES IN THAT 200 MILE

TERRITORIAL SEA PROVIDED FOR INNER 100 MILES BEING RESERVED EXCLUSIVELY FOR BRAZILIAN NATIONALS WHILE OUTER 100 MILES WAS AVAILABLE FOR OUTSIDERS. PERU SAW NO CONFLICT BETWEEN RIGHTS OF COASTAL STATE AND RIGHTS OF INTERNATIONAL COMMUNITY. IN THEIR VIEW, ABSTRACT INTERNATIONAL COMMUNITY CONSISTED MAINLY OF COASTAL STATES.

4. GUYANAN REP INDICATED THAT HE DID NOT UNDERSTAND CONCEPT OF PLURALITY AS EXPRESSED BY PERUVIAN REP. PLURALITY OF REGIMES CONCEPT MADE SENSE FOR PATRIMONIAL SEA BUT NOT FOR TERRITORIAL SEA WHICH HAD DEFINED CONTENT. (LATER, GUYANAN REP EXPRESSED APPRECIATION FOR FLEXIBILITY SHOWN BY PERU AND URUGUAY IN INDICATING THAT TERM TERRITORIAL SEA COULD BE CHANGED.)

5. PERUVIAN REP RESPONDED TO GUYANAN REP THAT NEW CONCEPTS WERE NEEDED TO REPLACE OUTMODED CONCEPTS SUCH AS TERRITORIAL SEA. EVEN WITHIN TERRITORIAL SEA, TRADITIONAL DOCTRINE OF INNOCENT PASSAGE LIMITED FULL SOVEREIGNTY. IF LIMITATION WERE PERMISSIBLE WITHIN 12 MILES, WHY NOT BEYOND? IT MIGHT BE POSSIBLE TO HAVE INNOCENT PASSAGE UP TO 12 MILES WITH FREE TRANSIT IN ZONE BEYOND UP TO 200 MILES. PERUVIAN REP SUGGESTED THAT TERRITORIAL SEA MIGHT BE CALLED SOMETHING ELSE MORE APTLY REFLECTING ECONOMIC AND ECOLOGICAL DEVELOPMENTS WHICH HAD RECENTLY EMERGED. IF TRADITIONAL TERMS WERE INSUFFICIENT, THEN NEW ONES SHOULD BE FOUND WHICH WOULD SECURE RIGHTS AND INTERESTS OF ALL STATES.

6. REP OF URUGUAY REINFORCED PERUVIAN STATEMENT, AND COMMENTED THAT PATRIMONIAL SEA WAS "VERY FRUITFUL" NEW CONCEPT. CONCEPT OF FREE SEA WAS UNDER REVISION AS OCEAN RESOURCES ARE NOW RECOGNIZED AS BEING EXHAUSTIBLE. URUGUAY WAS ALSO WILLING TO CHANGE LABELS TO CORRESPOND WITH NEW CONDITIONS.

7. SOVIET REHFSUGGESTED THAT CONCEPTS WHICH WERE UNCLEAR OR WHICH HAD NOT SERVED NEEDS SHOULD BE CHANGED. HOWEVER, FOR CONCEPTS WHICH HAD JUSTIFIED THEMSELVES, REVISION WAS UNNECESSARY. SOVIET DRAFT ARTICLES ON TERRITORIAL SEA PROVIDED THAT COASTAL STATES COULD CLAIM TERRITORIAL WATERS UP TO 12 MILES MAXIMUM. IF GEOGRAPHICAL CIRCUMSTANCES DICTATED A NARROWER TERRITORIAL SEA, THEN SUCH CIRCUMSTANCES WOULD DETERMINE BREADTH. SOVIET REP
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SUGGESTED THAT TRADITIONAL CONCEPTS BE USED PROVISIONALLY IN ORDER TO MOVE AHEAD WITH WORK.

8. KUWAIT REP COMMENTED THAT PLURALITY OF REGIMES COULD BE APPLICABLE WITHIN TERRITORIAL SEA AND PATRIMONIAL SEA. IT MIGHT BE USEFUL TO LEARN MORE ABOUT EXISTING LAW AND THE RELATIONSHIP OF NEW CONCEPTS TO IT.

9. CANADIAN REP INDICATED SLIGHT DISPLEASURE WITH PHILOSOPHICAL

TONE OF WORKING GROUP DISCUSSION. TRADITIONAL CONCEPT OF TERRITORIAL SEA DID NOT INCLUDE TOTAL SOVEREIGNTY AND SOME STATES HAD SUGGESTED SPECIAL EXCEPTIONS FOR STRAITS. THUS, IT WAS ACKNOWLEDGED BY MANY THAT TRADITIONAL CONCEPT OF TERRITORIAL SEA SHOULD BE CHANGED. EVEN WITH RESPECT TO HIGH SEAS REGIME, IT HAD ALWAYS BEEN RECOGNIZED THAT FLAG STATE JURISDICTION WAS APPLICABLE SO PLURALITY EXISTED THERE. SPEAKING PERSONALLY, BEESLEY SAW NO DIFFICULTY IN SAYING THAT COASTAL STATE POLLUTION ZONE WAS SUBJECT TO HIGH SEAS REGIME. WHAT WAS IMPORTANT WAS TO WORK OUT SOLUTION TO CONFLICTING USE PROBLEMS. CANADIAN REP QUESTIONED HOW PRESENT GENERAL DISCUSSION WOULD BE APPLICABLE TO SPECIFIC PROBLEMS BEFORE WORKING GROUP.

10. NIGERIAN REP SUGGESTED STICKING TO TERMS WHICH WERE WELL-DEFINED. HE DID NOT THINK PLURALITY OF REGIMES MADE SENSE WHEN APPLIED TO TERRITORIAL SEA, BUT WAS APPLICABLE TO WATER AREAS BEYOND. NIGERIA FAVORED USE OF TERM "ECONOMIC ZONE" FOR AREA BEYOND.

11. REP OF IRAQ POINTED OUT DIFFERENCE WHICH HAD EMERGED FROM DISCUSSION REGARDING CREATING, ON THE ONE HAND, NEW CONCEPTS SUCH AS ECONOMIC ZONE AND PATRIMONIAL SEA AND, ON THE OTHER HAND, EXTENSION OF TERRITORIAL SEA CONCEPT. DIFFERENCE SEEMED MORE IN APPROACH THAN SUBSTANCE.

12. INDIAN REP STATED BASIC PROBLEM WAS RECONCILIATION OF NEED FOR INTERNATIONAL TRADE AND SHIPPING WITH COASTAL STATE DESIRE FOR JURISDICTION OVER RESOURCES. HE FELT THAT ANOTHER LIMIT WAS NECESSARY FOR COASTAL EXCLUSIVE ECONOMIC ZONE BEYOND THE TERRITORIAL SEA. CONCEPTUAL DIFFERENCE WAS WHETHER TERRITORIAL SEA WAS UMBRELLA CONCEPT WITH RESOURCE JURISDICTION UNDER IT OR TERRITORIAL SEA WAS NARROW BELT WITH ECONOMIC ZONE BEYOND. QUESTION WAS SOVEREIGNTY OF COASTAL STATE MINUS CERTAIN
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RIGHTS OR MORE FUNCTIONAL APPROACH WITH VARIOUS LIMITS. CRUCIAL ISSUE WAS WHETHER RESIDUAL POWER WAS IN COASTAL STATE OR IN HIGH SEAS REGIME. INDIAN FAVORED FUNCTIONAL APPROACH IN AREA BEYOND TERRITORIAL SEA WHICH WOULD SPECIFY COASTAL STATE RIGHTS WITH REMAINDER AS HIGH SEAS RESIDUUM.
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